Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	)))	CG Docket No. 11-116
Consumer Information and Disclosure	))	CG Docket No. 09-158
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF THE
VIRGINIA STATE CORPORATION COMMISSION STAFF

Introduction

The Division of Communications of the Virginia State Corporation Commission ("VSCC Staff") respectfully submits these Comments in response to the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") released on July 12, 2011 in GC Docket No. 11-116, GC Docket No. 09-158, and CC Docket No. 98-170. The NPRM seeks comments "on proposed rules designed to assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice referred to as cramming."[1]

NPRM and Proposed Rules

The NPRM recognizes that cramming is the most common billing consumer complaint regarding wireline telephone service. It further recognizes that "reports of cramming likely understate the magnitude of the problem because consumers face significant challenges in

[1] NPRM, p. 2.

detecting and preventing unauthorized charges on their telephone bills."[2]

The FCC's proposed rules would require:

(1) A wireline carrier to provide clear and conspicuous notification to subscribers of the option to block third-party charges from their telephone bills if the carrier offers this option.

(2) A wireline carrier to place charges from a non-carrier third-party in a section of the bill separate from the carrier's charges.

(3) Both wireline and wireless carriers to include on their bills and websites the FCC's contact information for the submission of complaints.

The NPRM seeks comments on these proposed rules as well as a number of other proposals suggested by parties in the record including blocking all third party charges. Those include:

(1) Requiring disclosure of the third-party vendor's contact information on the customer's bill.

(2) Requiring wireline carriers to disclose that they do not offer blocking of third-party charges.

(3) Requiring wireline carriers to block third-party charges upon request.

(4) Prohibiting all third-party charges on all wireline telephone bills.

In addition, the NPRM requests comments on various aspects of the due diligence efforts that should be required of carriers and vendors, as well as ways to improve federal-state coordination over cramming complaints.

Rockefeller Report

A recently issued Staff Report, "Unauthorized Charges on Telephone Bills," from the

[2] Ibid, p. 3.

Committee on Commerce, Science, and Transportation chaired by Senator Jay Rockefeller ("Rockefeller Report")[3] states that unauthorized third-party charges are a nationwide consumer problem. The Rockefeller Report claims that third-party billing is a billion dollar industry and "in recent years, approximately 300 million separate third-party charges, worth more than $2 billion, have been placed on landline customers' telephone bills each year." [4]

The Rockefeller Report makes several key findings:[5]

(1) A substantial percentage of third-party charges are unauthorized.

(2) Telephone companies profit from cramming.

(3) Cramming affects every segment of the landline telephone customer base.

(4) Many third-party vendors are illegitimate and created solely to exploit third-party billing.

(5) Many telephone customers experiencing cramming did not receive help from their telephone companies.

(6) The telephone companies are aware that cramming is a major problem on their third party billing systems.

The Rockefeller Report highlights that prior efforts relying on voluntary industry guidelines to thwart cramming have been largely ineffective, and "telephone consumers do not have the legal protections that credit card consumers enjoy through the Fair Billing Act. Consumers who dispute charges on their credit card bills have more options and more rights than consumers who dispute charges on their telephone bills."[6] The Committee staff investigating

[3] Issued on July 12, 2012.

[4] Rockefeller Report, p. 11.

[5] Ibid, Executive Summary pp. ii-iv.

[6] Ibid, p. 4.

cramming for the Rockefeller Report reviewed thousands of complaints and documented millions of instances of cramming on customers' telephone bills. The Rockefeller Report states:

> Although it is difficult to determine precisely how many third-party charges are unauthorized, the evidence obtained through this investigation overwhelmingly suggests that it is a substantial percentage. Because so many third-party charges are unauthorized, the third-party billing system that was initially promoted as "convenience for telephone customers" has instead made them targets for scams. Third-party billing has likely cost telephone customers billions of dollars in unauthorized charges and wasted time over the past decade.[7]

The Rockefeller Report goes into great detail regarding the illegal nature of the cramming operations of many of these third-party vendors and the multiple ways these companies use abusive practices to deceive businesses and consumers. A major theme of consumer complaints is "while it appears to be very easy for a third-party vendor to place unauthorized charges on consumers' phone bills, it is difficult and time-consuming for consumers to remove these charges from their bills and receive refunds."[8]

The Rockefeller Report points out that telephone companies play a critical role in third-party billing. They generate significant revenue from placing these third-party charges on their customers' bills, but also claim to "have practices in place to protect their customers against cramming."[9] However, the Rockefeller Report concludes that

> While these safeguards protected some telephone customers from cramming, Committee staff found evidence showing that (1) the procedures do not work properly; and (2) that even when the procedures do work properly, they do not eliminate cramming. Even if they are effectively employed, blocking and other "back end" responses to cramming do not prevent fraudulent billers from gaining access to the companies' billing systems and harming consumers.[10]

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[7] Ibid, p. 11.

[8] Ibid, p. 17.

[9] Ibid, p.33.

[10] Ibid.

It further concludes that the use of third-party billing on telephone bills has been a failure as it has not created any conveniences for customers but instead has made them targets for scams and other fraudulent activity.

> Despite the telephone companies' decision to enact voluntary anti-cramming guidelines and the FCC's "Truth-in-Billing" requirements, it still takes minimal effort for a company engaged in cramming to place unauthorized third-party charges on consumers' bills, while it remains difficult for customers to find and remove these charges from their telephone bills. As a result, unless additional protections are put in place, millions of telephone customers will likely continue to face billions of dollars of unauthorized charges.[11]

Discussion

The VSCC Staff appreciates the FCC's effort to combat cramming. However, the FCC's proposed rules provide only minimal improvement to the current situation. They may help some consumers more quickly identify unauthorized charges on their bills, but do very little to prevent such charges from appearing in the first place or to resolve the customers' cramming billing disputes. Providing consumers with clear and conspicuous notice regarding third-party billing blocking options would be helpful; however, this does not go nearly far enough as it does not even require all carriers to offer this option to its subscribers. Further, as the Rockefeller Report recognizes, a third-party block is not foolproof as there have been numerous situations where unauthorized cramming charges have appeared on customers' bills where a "third-party block" is supposed to be applied.

As the NPRM notes on page 21, our comments in response to the FCC's August 27, 2009 Consumer Information NOI stated that the only way to stop cramming is to require companies to cease billing for others. We remain convinced that anything short of a prohibition against billing

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[11] Ibid, p. 44.

for all third-party charges will not be effective in protecting consumers against cramming--a prevalent and illegal practice.[12] There is scant evidence of any consumer benefits derived from third-party billing, and the principal beneficiaries (from financial gain) are the aggregators, third-party vendors, and the telephone companies. Cramming has created significant and sustained consumer harm and should not be allowed to continue--let alone flourish as it has done for many years.

Cramming is not a problem that can be fixed by getting rid of one or two bad apples in the barrel, but one where most of the apples are rotten and, therefore, unsalvageable. While we continue to support a full prohibition against third-party billing, to the extent that the FCC does not require such, at the very minimum, it should implement the following restrictions:

(1) Require all telephone carriers that bill for third-party vendors to block third-party charges to customers unless customers knowingly initiate action to authorize such charges on their bills, and such action is verified by an independent third party similar to the existing procedure for changing long distance carriers. Consumers should not have to experience cramming before they are offered or provided this protection.

(2) Restrict a telephone carrier from entering into any billing agreement with any third party or billing agent unless the agreement requires an independent third-party verification of the customer's authorization.[13]

(3) Require a telephone carrier to remove any third-party charge from the customer's bill that a customer claims is unauthorized. The customer should not be required to

[12] The only possible exception would be for telephone calls that are customer initiated by dialing 1+, 0+, 0-, or 1010XXX, or that a customer accepts as collect; or for products, goods, or services offered by or bundled with the services of a telephone company or its affiliates. This is consistent with the Virginia statute referenced in Footnote 13.

[13] The 2009 Virginia General Assembly enacted § 56-479.3 "Authorization and verification for products, goods, and services to be billed on a telephone bill." This statute includes such a provision.

contact the third-party vendor. The telephone carrier should be subject to a penalty for not complying with this requirement.

Conclusion

The Virginia SCC Staff appreciates the FCC's efforts to combat cramming, and the opportunity to provide comments in this important rulemaking. Unfortunately the proposed rules do not go far enough, will offer only minimal improvements, and will not solve the problem. Consumers simply should not be subjected to this unscrupulous practice, of which the Rockefeller Report does an excellent job of exposing, explaining, documenting, and quantifying. The only way to eliminate this unlawful and fraudulent practice completely is to prohibit telephone carriers from billing for third party vendors. If that is not done, at the very minimum, the three restrictions outlined above should be implemented.

Respectfully submitted,

Virginia State Corporation Commission Staff

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October 24, 2011